

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MASSACHUSETTS

HEARTS ON FIRE COMPANY, LLC,

Plaintiff,

v.

EIGHTSTAR DIAMOND COMPANY,

Defendant.

CIVIL ACTION NO. 04 12258-JLT

**EIGHTSTAR'S STATEMENT OF MATERIAL FACTS
AS TO WHICH THERE IS NO GENUINE ISSUE**

Pursuant to Local Rule 56.1, EightStar Diamond Co. ("EightStar") makes the following statement of material facts to which there is no genuine issue:

1. Hearts on Fire ("HOF") is a Massachusetts company located in Boston, Massachusetts. See Exhibit 1, HOF Amended Complaint, ¶ 2.
2. EightStar is a California corporation located in Cotati, California. See Exhibit 1, HOF Amended Complaint, ¶ 3.
3. Grimaldi is a North Carolina corporation located in Chapel Hill, North Carolina. See Exhibit 1, HOF Amended Complaint, ¶ 4.
4. E.R. Sawyer is a California corporation that was sued by HOF on May 14, 2004 and had entered into a Consent Judgment with HOF on or about June 23, 2004. See Exhibit 1, HOF Amended Complaint, ¶ 30 and ¶ 31. Also see Exhibit 7.
5. On July 22, 2004, HOF threatened The Jewelry Source with litigation and as a result, on July 27, 2004, The Jewelry Source agreed to cease using any language similar to HOF's alleged trademarks. See Exhibit 1, HOF Amended Complaint, ¶ 32 and ¶ 33.

6. On October 31, 2005, Grimball entered into a Consent Judgment with HOF wherein Grimball agreed to stop using HOF's alleged trademarks. See Exhibit 4, ¶ 3.
7. All three jewelry retailers, The Jewelry Source, Grimball's, and E.R. Sawyer's have attested in declarations that no one from EightStar has directed or encouraged them to use HOF's marks and that they have not submitted any language used on their web pages to EightStar for approval. All three small jewelry retail have stated in declarations that no one connected with EightStar has directed, instigated, or encouraged them to use HOF's trademarks nor any confusingly similar designations. See Exhibit 5, ¶ 5 and ¶ 6; Exhibit 6, ¶ 6; and Exhibit 7, ¶ 6, ¶ 7 and ¶ 8.

SUBMITTED this _____ day of March, 2006.

MILLER NASH LLP

/s/ James Phillips

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Admitted *Pro Hac Vice*

CERTIFICATE OF SERVICE

I hereby certify that this document(s) filed through the ECF system will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) and paper copies will be sent to those indicated as non registered participants on March 10, 2006.

/s/ James L. Phillips
James L. Phillips